

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL MCGORE,

Plaintiff,

v.

Case No. 24-cv-11510
Honorable Linda V. Parker

US DISTRICT COURT JUDGES, et al.,

Defendants.

**ORDER DENYING CERTIFICATE OF APPEALABILITY AND LEAVE
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

This matter is before the Court on Plaintiff's pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). On August 5, 2024, this case was dismissed without prejudice due to McGore's failure to comply with an order which required him to either pay the filing and administrative fee or apply to proceed *in forma pauperis*. (ECF No. 4) McGore filed a motion for a certificate of appealability on August 20, 2024. (ECF No. 6) McGore also filed a letter restating his claims and prisoner trust fund account statement on October 3, 2024. (ECF No. 7, 8)

The Court denies McGore motion for a certificate of appealability as moot. It is unnecessary for McGore to obtain a certificate of appealability before

appealing the dismissal of a civil rights action brought pursuant to 42 U.S.C. § 1983. 28 U.S.C. § 2253 and Fed. R. App. P. 22(b) state that an appeal from the denial of a writ of habeas corpus may not be taken unless a certificate of appealability is issued. Because McGore's case was filed as a civil rights action under 42 U.S.C. § 1983, and not as a petition for writ of habeas corpus, plaintiff does not need to obtain a certificate of appealability prior to appealing this Court's decision. *See Johnson v. CCA-Ne. Ohio Corr. Ctr. Warden*, 21 F. App'x 330 (6th Cir. 2001).

As this case was dismissed for want of prosecution for failing to either pay the filing fee or file the required application to proceed in forma pauperis, this case “is not to be reinstated to the district court's active docket despite the subsequent payment of filing fees.” *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997) (overruled on other grounds). As such, the Court will not reopen this case in response to McGore's letter and filing of the prisoner trust fund account. Further, the Court concludes that an appeal of this order cannot be taken in good faith. *See* Fed. R. App. P. 24(a).

IT IS ORDERED that plaintiff's motion for certificate of appealability is **DENIED AS MOOT**;

IT IS FURTHER ORDERED that plaintiff is **DENIED** leave to proceed *in*

forma pauperis on appeal.

SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: October 9, 2024

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, October 9, 2024, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager